UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/501,553	02/09/2000	Joseph C. Haddad	8552-2-CON-III	4047

7590 03/01/2004

Frank Chau
F. Chau & Associates, LLp
1900 Hempstead Turnpike, Suite 501
East Meadow, NY 11554

EXAMINER	
SRIVASTAVA, VIVEK	

ART UNIT	PAPER NUMBER
2611	8

DATE MAILED: 03/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/501,553	HADDAD, JOSEPH C.	
	Examiner	Art Unit	
	Vivek Srivastava	2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 December 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *3-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *3-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Double Patenting

Claims 3-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3-1 of U.S. Patent No. 5,835,843. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been an obvious modification of claims 3-7, 10, 11, 12 and 14 in patent 5,835,843 to get claims 1 in the instant application.

Regarding claim 3 of the instant application, claim 3 is broader recitation of claim 3 in application 5,835,843. Therefore, it would have been obvious to modify claim 3 in application 5,835,843 to get claim 3 in the instant application.

Claim 4 of the instant application, claim 4 is a broader recitation of claim 6 in application 5,835,843. Therefore, it would have been obvious to modify claim 6 in application 5,835,843 to get claim 4 in the instant application.

Claim 5 of the instant application, claim 5 is a broader recitation of claim 7 in application 5,835,843. Therefore, it would have been obvious to modify claim 7 in application 5,835,843 to get claim 5 in the instant application.

Claim 6 of the instant application, claim 6 is a broader recitation of claim 8 in application 5,835,843. Therefore, it would have been obvious to modify claim 8 in application 5,835,843 to get claim 6 in the instant application.

Claim 7 of the instant application, claim 7 is a broader recitation of claim 9 in application 5,835,843. Therefore, it would have been obvious to modify claim 9 in application 5,835,843 to get claim 7 in the instant application.

Claim 8 of the instant application is an exact recitation of claim 10 application 5,835,843.

Claim 9 of the instant application, claim 9 is a broader recitation of claim 11 in application 5,835,843. Therefore, it would have been obvious to modify claim 11 in application 5,835,843 to get claim 9 in the instant application.

Claim 10 of the instant application, claim 10 is a broader recitation of claim 13 in application 5,835,843. Therefore, it would have been obvious to modify claim 4 in application 5,835,843 to get claim 12 in the instant application.

Claim 11 of the instant application, claim 11 is a broader recitation of claim 14 in application 5,835,843. Therefore, it would have been obvious to modify claim 14 in application 5,835,843 to get claim 11 in the instant application.

Claim 12 of the instant application, claim 12 is a broader recitation of claim 4 in application 5,835,843. Therefore, it would have been obvious to modify claim 4 in application 5,835,843 to get claim 12 in the instant application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 3-7 and 10-12 rejected under 35 U.S.C. 102(b) as being anticipated by Yurt et al (5,132,992).

Regarding claims 3, Yurt discloses a and audio/video transmission delivery system which delivers programming to users based on user's requests (see col 2 lines 49-61), the request includes a delivery time which provides information as to the maximum or latest delivery time (see col 15 lines 35-45 and col 14 lines 29-34). Yurt further discloses receiving the segments or audio/video programming at receiver systems and then decompressing the compressed material (see col 4 line 64 – col 5 line 9).

Claim 4 is met by that discussed in claim 3.

As to claims 5 and 6, Yurt discloses interactively communicating the program notes and price to the user via telephone orders (see col 14 lines 49-63).

Regarding claim 7, Yurt discloses the claimed multiplexing (see col 19 lines 57-65).

Considering claim 10, Yurt discloses a queue manager program makes best use of the available distribution channels and media for efficient transmission and storage fo the requested items (see col 15 lines 33-45). It should be noted that programs are delivered according to a delivery time. Thus the queue manager program 'weighs' each program according to the delivery time and transmits according to this weight order.

Considering claim 11, Yurt discloses transmitting via satellite (Abstract).

Regarding claim 12, Yurt discloses a buffer for storing the program for later viewing (see col 5 lines 1-9).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yurt et al (5,132,992).

Regarding claim 8, Yurt discloses transmitting via telephone, cable or satellite (see Abstract) but fails to disclose the claimed fiber optic link. The Examiner takes Official Notice it would have been well known to transmit via fiber optic link to enhance signal quality and to provide a larger bandwidth. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Yurt to include the claimed fiber optic link to enhance signal quality and to provide a larger bandwidth.

Regarding claim 9, Yurt fails to disclose the claimed further including scheduling of said requested program segments as a function of the rate of arrival of said requests. The Examiner takes Official Notice that it would have been well known to include scheduling requested program segments as a function of the rate of arrival of said requests to efficiently maximize delivery time and efficiently utilize bandwidth.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Butcher (5,969,714) – Interactive VOD system

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 308-9051, (for formal communications intended for entry)

Or:

(703) 308- 5399 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivek Srivastava whose telephone number is (703) 305 - 4038. The examiner can normally be reached on Monday - Thursday from 8:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andy Faile, can be reached at (703) 305 - 4380.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 305 - 3900.

VS 2/21/04

VIVEK SRIVASTAVA
PRIMARY EXAMINER